REPORTED

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL ORIGINAL CIVIL JURISDICTION

CHARTERED ACCOUNTANTS REFERENCE NO.1 OF 1988

Insitution of Chartered
Accountants of India ..Applicant.

V/s.

Shri. S.R. Khanna,
Chartered Accountant, 2nd Floor,
Raja Bahadur Mansion, 9/11, Dean
Lane, Opp. J & K Bank Ltd., Fort,
Mumbai - 400 023. ..Respondent.

Mr.Virendra Tulzapurkar, Sr.Counsel with Mr.S. Srikrishna i/b. Kanga & Co. for Applicant.

Mr.S.R.Khanna respondent in person.

CORAM : R.M.LODHA AND J.P.DEVADHAR, JJ.

DATED : 5TH AUGUST, 2004.

ORAL JUDGMENT (PER J.P.DEVADHAR, J.)

. This reference is made under Section 21(5) of the Chartered Accountants Act, 1949 ('Act' for short).

2. Mr.S.R.Khanna, the respondent herein, a Chartered Accountant, carrying on the practise of accountancy profession in the name and style of "S.R.

Khanna & Co." is a registered member of the Institution of Chartered Accountants of India ('the institute' for short). In view of the complaints made by the Director of Shree Industrial Rubber Works (P) Ltd. ('complainant' for short) against the respondent, the council of Institute of the Chartered Accountants of India ('the council' for short) had referred the said complaints to the disciplinary committee constituted under the Act for enquiry. The disciplinary committee on completion of the enquiry submitted its report to the council holding that the respondent is guilty of professional misconduct set out in clause 1 of Part I of the Second Schedule to the Act. The council considered the report of the disciplinary committee and recorded its finding under section 21(3) of the Act that the respondent is guilty of professional misconduct. Thereafter, as per section 21(5) of the Act, the council has forwarded the case to this Court for appropriate orders with its recommendations that for the above professional misconduct, the name of the respondent be removed from the Register of Members for a period of 6 months.

3. The facts relevant for the present reference are as follows:-

. The respondent from time to time was appointed by Shree Industrial Rubber Works (P) Ltd. to audit its accounts. It is an admitted fact that the accounts of the said company has been audited by the respondent upto 30th June, 1978 and the accounts for 30th June, 1979 and 30th June, 1980 have remained to be audited and/or authenticated by the respondent.

4. Admittedly, the complainant and the respondent were not getting along well with each other for over a number of years. The respondent was ultimately removed from the auditorship of the company with effect from 14th December, 1982. Even thereafter there were disputes between the parties regarding the non payment of professional fees/returning of books of accounts, etc. On 28th December, 1982 the respondent wrote a letter to the Registrar of the Companies ('R.O.C.' for short), Mumbai which reads as under:-

"S.R. Khanna & Co.
Chartered Accountants

28th December '82.

The Registrar of Companies,
100, Everest,
Marine Drive,
Bombay- 400 002.

Sub :- Shree Industrial Rubber Works Pvt. Ltd.

(i) Appointment of Auditor No. 18982 of 1976-77.
(ii) Opinion.

Dear Sir,

. This is with reference to letter addressed to M/s.Shree Industrial Rubber Works Pvt.Ltd., whose annual general meeting was held on 14-12-'82, as per notice received by me. Though, the letter is self-explanatory, we wish to inform that we had made certain notes on the Balance Sheet both for the year '79 and '80, which was apparent :-

Notes

1) The Company has surrendered the tenancy rights of premises with no consideration and legal fights.

2) Large amounts of money has been credited in the books of accounts - for which no confirmations are available.

3) Confirmations of debtors/creditors are not forthcoming.

Other Points.

i) The Company has not maintained fixed assets register for those years and sold machinery apparently with minor considerations.

ii) Two Directors have resigned during the year accountant has not been employed for last very many years.

iii) Company is reporting loss for so many years wiping out the capital.

iv) Factory has been shifted to Poona, where Managing Director who is sick is reportedly staying.

v) The majority shareholders do not take interest in the company for fear of taking liability / responsibility, and the company is being managed by the minority shareholders, who continue to show loses.

vi) The Directors have drawn no salaries for last years / and apparently living in luxuary, with no other sources of visible Income/ activity.

vii) No notice/B/Sheet/Profit and Loss A/c are being send to other shareholders. Therefore, the directors were asked to sign the accounts and send the same for my signature, which was not done fearing reprisals from Bankers / shareholders. Legally, it appears as per provisions of S-224 I continue to remain auditor for two years ie. '79 and '80, as I have not given permission to new investment, nor it was sought for.

You are requested to kindly let me know legal views on the subject and oblige,

. Thanking you,

Yours faithfully,
For S.R. Khanna & Co.

S.R. Khanna.

N-S :-
Sent you by Ordinary post
dated 28-12-'82."

5. On 26th March, 1983 and 9th May, 1983 the complainant addressed letters to the Institute levelling several charges of professional misconduct

against the respondent. It is not necessary to set out all those charges herein, as the only charge held to be proved against the respondent is the charge of professional misconduct specified in clause 1 of Part I of the Second Schedule to the Act. The said clause reads as under:-

" **THE SECOND SCHEDULE**
(See Sections 21(5) and 22)

PART I

Professional misconduct in relation to chartered accountants in practice requiring action by a High Court.

. A chartered account in practice shall be deemed to be guilty of professional misconduct, if he --

. (1) discloses information acquired in the course of his professional engagement to any person other than his client, without the consent of his client or otherwise than as required by any law for the time being in force;"

6. According to the complainant, the information disclosed by the respondent vide letter dated 28/12/1982 was acquired by the respondent in the course of his professional engagement and as the disclosure to the ROC was made without the consent of the complainant and without their being any requirement in law to disclose the same, the respondent had committed grave professional misconduct within the meaning of clause 1 of Part I of the Second

Schedule to the Act set out hereinabove. On perusal of the complaints, the council was prima facie of the opinion that the respondent was guilty of professional and/or other misconduct and, therefore, referred the case to the Disciplinary Committee for enquiry.

7. The respondent in his written statement filed before the disciplinary committee stated that the law would fail to serve the best interest of the community if it is held that the auditors had a duty to no one but the clients. It was stated that the auditors are servants of the Society and their duty is much larger than the private clients. It was further stated that he acted in good faith and in intellectual operation, coupled with large individual responsibilities.

8. On conclusion of the enquiry, the disciplinary authority held that the respondent is guilty of professional misconduct and accordingly submitted its report to the council. In the said report it is observed that the aforesaid letter dated 28/12/1982 was written by the respondent neither with the consent of the complainant nor there was any requirement of law for the respondent to have written the said letter to the ROC. It was also observed that

the auditor has to report only to the shareholders under section 227 of the Companies Act, 1956 and not to a Department of Company Law Administration like the ROC. The disciplinary authority concluded that the conduct of the respondent in disclosing the information received during the course of his professional engagement to the ROC constituted professional misconduct within the meaning of Clause 1 of Part I of the Second Schedule to the Act.

9. After considering the report of the disciplinary committee as also the oral and written submissions of the respondent, the council recorded its findings to the effect that the respondent is guilty of profession misconduct within the meaning of section 21 & 22 of the Act read with Clause 1 of Part I of the Second Schedule to the Act, in so far as the respondent had disclosed the information acquired in the course of his professional engagement to the ROC, Mumbai without the consent of the complainant. The council has recommended that the name of the respondent be removed from the Register of Members for a period of six months.

10. Dr.Tulzapurkar, learned senior Advocate appearing on behalf of the Institute submitted that it

cannot be disputed that the information disclosed to the ROC was acquired by the respondent during the course of his professional engagement. He submitted that the information disclosed was confidential in nature. Since the disclosure made by the respondent was without the consent of the complainant and there was no requirement of law necessitating such disclosure, the respondent was guilty of professional misconduct within the meaning of Clause 1 of Part I of the Second Schedule to the Act. He further submitted that in the facts and circumstances of the case, the recommendation of the council that the name of the respondent be removed from the Register of Members for a period of six months is just and proper. In support of his submissions, he relied upon the decision of the Apex Court in the case of the **Council of the Institute of Chartered Accountants of India & Anr. V/s. B. Mukherjea** reported in **1958 S.C.R. 371** and the decision of the Calcutta High Court in the case of **Chief Controller of Exports V/s. G.P.Acharya** reported in **A.I.R. 1964 Calcutta 173**.

11. Mr.Khanna, the respondent appearing in person, submitted that when an auditor is appointed by the company, he is required to inform the ROC in Form 23B regarding his acceptance or non acceptance of

appointment within a month of receipt of the appointment. In the present case, the company had sought to remove the respondent from the auditorship on wholly unjustifiable and illegal grounds and, therefore, he thought it fit address a letter to the ROC. He submitted that as per the new concept of ethical guidelines laid down by the Institute of U.K. which has been deriving force in India, where an auditor is removed or resigns he must disclose to the appropriate authorities in spite of contractual position. Relying upon the decision of the Court of Appeal in the case of **Initial Services Ltd. V/s. Putterill** reported in **(1968) 11 QBD 396**, he submitted that the ROC being an authority entitled to receive information, the case fell within the exception to the rule of confidentiality. It was further submitted that according to the guidance note issued recently by the committee on ethical standards the competent authorities to whom the disclosure could be made are (i) the Registrar of Companies (ii) SEC Authorities (iii) RBI (iv) IT Department or Insurance Regulations Authority & Development Authority or any other Government Regulatory bodies. It was submitted that the offences/unlawful acts done by the directors are difficult to be reported to shareholders and in such cases it is the duty/obligation of the auditor to

report directly to the appropriate authorities. According to the respondent, the letter addressed by him to the ROC did not constitute professional misconduct and hence no action is warranted.

12. We have considered the rival submissions. It is not in dispute that the information disclosed vide letter dated 18/12/1982 was acquired by the respondent during the course of his professional engagement. It is also not in dispute that the respondent had neither obtained the consent of the company nor there was any requirement of law to disclose such information to the ROC. The contention of the respondent that the voluntary disclosure made by him to the ROC was in public interest and with a view to bring home the circumstances under which he was wrongfully removed from the auditorship is not convincing. From the facts on record it is evident that the respondent was aggrieved by the action of the company in removing him from the auditorship and there were disputes regarding non payment of his professional fees and in these circumstances the letter was written more out of vengeance rather than public interest. If the public interest was the paramount consideration, then the respondent would have made a report disclosing all such information to

the shareholders / creditors. The fact that no such report was made and the fact that after his removal from the auditorship on 14/12/1982, the respondent chose to write a letter on 28/12/1982 to the ROC without there being such obligation, clearly shows that the plea of public interest raised is only a ruse and not a bonafide action on the part of the respondent. It cannot also be stated that the letter was written with a view to protect his own interest. No action was contemplated by the ROC against the respondent and hence there was no question of addressing a letter to protect his own interest. Therefore, addressing a letter to the ROC was neither in public interest nor with a view to protect his own interest. When the statute and the code of conduct prescribed by the Institute requires a member of the Institute not to disclose any information received during the course of professional engagement except in the circumstances set out therein, any breach thereof must be held to be gross professional misconduct. In these circumstances, the conclusion drawn by the disciplinary committee as well as the council that the respondent is guilty of professional misconduct cannot be faulted.

13. However, the recommendation of the council

that the name of the respondent be removed from the Register of Members for a period of six months appears to be too harsh. In view of the fact that the ROC is a competent authority under the Companies Act, 1956 and looking to the nature of confidential information disclosed by the respondent, we are of the opinion that the interest of justice would be met in reprimanding the respondent for his professional misconduct, instead of removing his name from the Register of Members for six months.

14. Accordingly, we accept the findings of the disciplinary authority as well as the council as regards professional misconduct committed by the respondent, however, direct that the respondent a member of the Institute be reprimanded for his professional misconduct.

15. The reference is disposed of accordingly with no order as to costs.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)